UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
525 NE Oregon Street
PORTLAND, OREGON 97232-2737

AUG 2 2001

MEMORANDUM FOR: Donna Darm
Acting Regional Administrator

FROM: William L. Robinson
Assistant Regional Administrator
Sustainable Fisheries Division

SUBJECT: A Tribal Resource Management Plan Provided by the Nez Perce Tribe affecting Snake River spring/summer chinook Salmon in the Imnaha River Under the Endangered Species Act, Tribal 4(d) Rule (July 10, 2000; 65 FR 42481) - **DETERMINATION MEMORANDUM**.
Tracking Number: NWR/4d/14/2001/002

ISSUE

The Nez Perce Tribe submitted a Tribal Resource Management Plan (TRMP) for Snake River spring/summer chinook salmon in the Imnaha River sub-basin for review under the Tribal 4(d) Rule on April 30, 2001 (NPT 2001). The scope of the TRMP includes tribal and non-tribal fisheries in the Imnaha River subbasin in 2001 only. Management of the fisheries and evaluation of fishery impacts occur in the context of artificial propagation activities in the subbasin addressed elsewhere. Activities described in the TRMP include the allocation of adult salmon returns to brood stock collection, natural spawning escapements, and harvest. Harvest is proposed in ceremonial and subsistence fisheries managed by the tribe and recreational fisheries managed by the State of Oregon Department of Fish and Wildlife (ODFW) which incorporate conditions for the conservation and restoration of salmon stocks.

The TRMP describes hatchery operations and harvest that affect the Imnaha River population of spring chinook salmon which is included in the threatened Snake River Spring/summer chinook salmon Evolutionarily Significant Unit (ESU). Tribal resource managers cooperate with the Oregon Department of Fish and Wildlife in management of the chinook salmon resource, including artificial propagation, monitoring and evaluation, and harvest management in the Imnaha basin. The TRMP describes both the activities that are principally conducted by the Tribal government and the activities that are principally conducted by the State, through cooperative agreements. This TRMP is within the regulatory definition of "Tribal Resource Management Plans" in the Tribal 4(d) Rule (50 CFR 223.209(b)(1)). As per the Tribal 4(d) Rule, NMFS consulted regularly with the Tribe during development of the TRMP to provide guidance on activities to be covered under the Tribal 4(d) Rule and to exchange information and discuss what would be needed to provide for the conservation of the listed species.

Included in the actions proposed by the TRMP are tribal and state fisheries which would harvest 670 adult and jack chinook salmon. The harvest proposal is based on a 10% impact on a total return that has been estimated at 6,700 fish. The analysis provided in the attached "Evaluation and Pending Determination" document concludes that the proposed harvest will not impede attainment of brood stock collection goals and supplemental releases of fish for natural spawning while still allowing a projected return of over 3,000 adult naturally produced spring chinook, the 3rd greatest return to the Imnaha River on record.

RECOMMENDATION

NMFS' Sustainable Fisheries Division (NMFS-SFD) evaluated the TRMP provided by the Nez Perce Tribe and finds that it adequately addresses all of the requirements of the Tribal 4(d) rule, including that it does not appreciably reduce the likelihood of survival and recovery of listed species that may be affected by the plan. NMFS-SFD recommends that the Regional Administrator make a determination that the take limitations of the Tribal 4(d) Rule apply to the Nez Perce Tribe's TRMP for Snake River spring/summer chinook salmon in the Imnaha River subbasin in 2001, provided that it is implemented in accordance with the implementation terms at the end of this memo.

BACKGROUND

In April, 1992, the National Marine Fisheries Service (NMFS) listed Snake River spring/summer and fall chinook as threatened under the Endangered Species Act (ESA)(April 22, 1992, 57 FR 14653). On July 10, 2000, NMFS issued a final ESA 4(d) Rule adopting regulations necessary and advisable for activities conducted under tribal resource management plans (TRMPs) (65 FR 42481, July 10, 2000 [50 CFR 223.209]). This rule created a limitation on the ESA section 9 take prohibitions for TRMPs where the Secretary of Commerce (Secretary) has determined that implementing the TRMP will not appreciably reduce the likelihood of survival and recovery for the listed species. The best available information is used to determine the TRMP's impact on the biological requirements of the species and the determination will be consistent with legally enforceable Tribal rights and with the Secretary's trust responsibilities to the Tribes.

The purpose of the Tribal 4(d) Rule is to establish a process whereby the conservation needs of listed species are met while respecting Tribal rights, values, and needs and not cause an abridgement of any treaties, rights, executive orders, or statutes. The rule recognizes the Secretary's trust responsibilities to the Tribes and reinforces the commitment to government-to-government relations as expressed in Secretarial Order 3206. The rule also requires the Secretary, in consultation with the Tribes, to use the best available scientific and commercial data (including any Tribal data and analysis) to determine the TRMP's impact on the biological requirements of the species.

The TRMP clearly defines its scope as addressing only the Imnaha River population of the Snake river spring/summer chinook ESU, during the time that it is in the Imnaha River sub-basin as

returning adult fish, in 2001. The TRMP addresses the allocation of adult salmon among needs for natural spawning, brood stock for an artificial propagation program designed to aid in recovery of this population, release of adult spawners into under-utilized spawning habitat within the Imnaha River sub-basin, and harvest.

Hatchery brood stock numbers and composition and the number of adult salmon available for supplemental releases in under-utilized habitat within the basin are established by agreements developed under *U.S. v. Oregon* and an Annual Operating Plan (AOP) (ODFW 2001) for the artificial propagation program. Under current hatchery operations, brood stock collection, and natural spawning escapement and composition are adjusted in accordance with a sliding scale that addresses the interannual variation in total run size and proportion of natural and hatchery-origin fish. Fisheries harvest objectives are developed to utilize a portion of the return after the hatchery and natural spawning escapements have been achieved. The management objective is to conduct fisheries in a manner that does not appreciably reduce the likelihood of survival and recovery of listed chinook salmon. Performance indicators include dam, weir and redd counts, harvest estimates and escapement goals. The proposed TRMP provides the framework through which the tribal jurisdiction can implement salmon fisheries while meeting requirements specified under the ESA.

As a result of *U.S. v. Oregon* dispute resolution in 1993, the Nez Perce Tribe and the State of Oregon Department of Fish and Wildlife (ODFW) cooperatively developed a management plan for restoration of Imnaha River spring/summer chinook, using the indigenous stock of Snake River spring/summer chinook in the Imnaha hatchery program. The management plan was submitted to National Marine Fisheries Service (NMFS) in an ESA Section 10 Permit application in 1998 (ODFW 1998). In response to the application from ODFW, NMFS issued section 10 (a)(1)(A) permit 1128 (NMFS 2000). The objectives for the permitted actions, as listed in the permit are: 1) Restore the natural populations of chinook salmon in the Imnaha River basin to ESA delisting levels, 2) reestablish traditional tribal and recreational fisheries for chinook salmon, 3) maintain the genetic and life history characteristics of the endemic wild population while pursuing mitigation goals and management objectives, and 4) operate the hatchery program to ensure that the genetic and life history characteristics of the hatchery fish mimic the wild fish.

The TRMP includes provisions for monitoring and evaluation to assess fishing-related impacts to Snake River spring/summer chinook salmon, and incorporates the Annual Operating Plan for the Imnaha River chinook enhancement and research project which monitors the abundance of naturally spawning fish, and allocates fish to artificial propagation brood stock and supplemental adult out plants. The TRMP only applies to the unique conditions in 2001. Information gathered in 2001 fishery monitoring and evaluation will be used (by NMFS and the co-managers) in future years to assess whether impacts to listed fish are as expected, and to develop longer-term planning.

DISCUSSION

Controversial Issues

Two potentially controversial aspects of the recommended action exist, related to perceptions of harvest impact and tribal trust responsibilities.

The TRMP explicitly calls for harvest directed on listed Snake River spring/summer chinook salmon. As a result of hatchery management for many years in the Imnaha River, all hatchery-origin fish of this program have had at least one listed parent and are therefore themselves listed. The ability to manage fishery programs based more firmly on the biological status of the local population, rather than strictly on listed status, is the basis of the Tribal 4(d) Rule. As described in this memorandum, in the attached evaluation, and in the TRMP itself, proposed harvest levels are not expected to substantially reduce the large return of spring/summer chinook to the Imnaha River in 2001 – the return will be at approximately 133% of the previously highest estimated spawning escapement even after harvest. Therefore, any potential controversy on this topic will not be as a result of estimated impacts to the natural population's prospects for survival and recovery, but instead will be based more a perception that listed fish should not be harvested in any case. There may be outreach tools that could help address this concern. Controversy on this topic is unlikely this year.

The more likely controversy to arise related to the evaluation and determination on this TRMP arises from the difficult nature of negotiations which led to pursuing this ESA compliance route. As described in the evaluation document, the State of Oregon and the Nez Perce Tribe cooperatively manage spring/summer chinook salmon in the Imnaha River subbasin. Despite frequent communication between NMFS and the two co-managers at the policy and staff levels, and despite the TRMP actually referencing agreements between the Tribe and State, the Nez Perce Tribe has raised certain objections to the inclusion of Oregon's recreational fisheries in this determination. NMFS-SFD staff have attempted to carefully craft the evaluation document to avoid any implications that the Tribe is in active support of recreational fishing or the selective fishing regulations promulgated by the State of Oregon, rather focusing the evaluation characterization on the more general opportunity for a recreational fishery within the sliding-scale template of the management plan, the existing Section 10 permit for the artificial propagation program, and the annual operating plan for the hatchery. The evaluation document may still incite some ire on the part of the Tribe, as description of the recreational fishery could not be too fully minimized and still enable analysis of its effects. The Tribe was given the opportunity to review an earlier draft of the evaluation document, and their comments were incorporated into the document to the extent possible.

Public Review and Comment

NMFS published notice of its proposed evaluation and recommended determination of the TRMP on May 16, 2001 (66 FR 27069). The public comment period closed on May 29, 2001. NMFS received no comments from the public. NMFS has received no comments from the co-

managers nor any new information and no issues were raised which required modifying the proposed evaluation and recommended determination. Some revisions were made in response to internal agency comments.

Evaluation of TRMP under the ESA 4(d) Rule

Attached is NMFS' evaluation of whether the TRMP meets the fundamental standard of the ESA, which is repeated in the Tribal 4(d) rule, of not appreciably reducing the likelihood of survival and recovery of listed species. In evaluating the fisheries proposed under the Nez Perce TRMP for the Imnaha River sub-basin chinook salmon, NMFS compared the TRMP to the standards under limits (4) and (6) of the all-species 4(d) rule(65 FR 42422) which were developed to assure that state and joint-state tribal fisheries plans meet this same fundamental standard.

Implementation Terms

The TRMP provided by the NPT includes a description of planned fisheries and certain monitoring and reporting requirements. Actions taken under the NPT TRMP qualify for the limitation on application of take prohibitions provided by the Tribal 4(d) Rule, provided that the following actions are implemented:

1. The co-managers will conduct the management activities, including fisheries, in accordance with the TRMP submitted by NPT, including the terms of the Annual Operating Plan and section 10 permit which were incorporated by reference. Each co-manager is responsible for the actions of any individual operating under his/her specific take authorization.

2. Weekly assessments of the amount of fishing effort and harvest, the abundance and composition of the chinook salmon return and the attainment of escapement goals and harvest quotas will be developed and provided to NMFS as described below.

3. ESA-listed species will be taken only by the means, in the areas, and for the purposes set forth in the TRMP, as limited by the conditions and requirements in this determination.

4. Each co-manager will coordinate and openly share data with other co-managers to ensure that no unnecessary duplication or adverse cumulative effects to ESA-listed species occur as a result of his/her activities.

5. NMFS employee(s), or any other person(s) designated by NMFS, will be allowed to accompany field personnel during the activities provided for in this authorization. Co-managers will allow such person(s) to inspect their records and facilities if such records and facilities pertain to ESA-listed species addressed by this TRMP or NMFS' responsibilities under the ESA.

6. NMFS may amend the provisions of this authorization after reasonable notice to the NPT and the cooperating co-managers. The application of the Tribal 4(d) rule take limitation ceases to be in force or effect if provisions of the TRMP are amended without prior evaluation by NMFS.

7. Weekly assessments of the amount of fishing effort and harvest, the abundance and composition of the chinook salmon return, and the attainment of escapement goals and harvest quotas will be developed. Summaries of the weekly assessments will be submitted to NMFS (see address below).

8. Fishery activities will cease if any activity conducted under the TRMP exceeds the level of take described in the TRMP, or if circumstances indicate that such an event is imminent. Such take will be reported to NMFS as soon as possible, but no later than one week after the take objective is exceeded. A written report will then be submitted to NMFS describing the circumstances of the take. The techniques used will be re-evaluated and revised accordingly to prevent further injury or death of listed species. Pending review of these circumstances, NMFS may suspend activities under the TRMP or amend this determination.

9. In order to effectively assess performance of the TRMP in 2001, and to facilitate planning and implementation of fisheries in future years, the NPT will provide a detailed description of the actual take of ESA-listed species that occurred under this Plan, fishing effort, harvest numbers and final spawning escapement and brood stock collection. This report will be provided to NMFS prior to December 1, 2001.

Reports must be submitted to Herb Pollard, Sustainable Fisheries Division, NMFS, 10215 W. Emerald Street, Suite 180, Boise, ID, 83704, no later than December 1, 2001.

REEVALUATION CRITERIA

NMFS will reevaluate this determination if: (1) the quota for incidental harvest of listed fish is exceeded; (2) the actions described by the TRMP are modified in a way that causes an effect on the listed species that was not previously considered in NMFS' evaluation; (3) new information or monitoring reveals effects that may affect listed species in a way not previously considered; or (4) a new species is listed or critical habitat is designated that may affect NMFS' evaluation of the TRMP.

SUMMARY

NMFS-SFD concludes that the TRMP for Imnaha River spring/summer chinook salmon in 2001 provided by the Nez Perce Tribe adequately addresses the requirement for a TRMP under the Tribal ESA 4(d) Rule and will not appreciably reduce the likelihood of survival and recovery of the Snake River spring/summer chinook salmon ESU. NMFS-SFD recommends that the ESA take limitation of the Tribal 4(d) Rule apply to the implementation of the TRMP provided that

activities conducted under the TRMP are in compliance with the Implementation Terms described above. "Compliance" is intended to mean adherence, by each of the co-managers, to the guidelines, mandates and performance standards of the TRMP, including adoption of any necessary rules to implement their responsibilities under the plan. All sampling, monitoring, assessment, evaluation, enforcement and reporting tasks or assignments related to harvest management in the TRMP shall be conducted by the co-managers as required in the TRMP.

ENVIRONMENTAL ASSESSMENT

As described in the Tribal 4(d) Rule (65 FR 42481), any plans determined to come within this Rule must be evaluated under NEPA prior to that determination. Accordingly, the NMFS-SFD prepared an environmental assessment (EA) for this action. The EA and a Finding of No Significant Impact (FONSI) are attached. The NMFS-SFD recommends that you also concur with the analysis of the EA and sign the FONSI.

DETERMINATION

1. I have determined that implementation of the TRMP for Imnaha River spring chinook salmon in 2001, submitted by the Nez Perce Tribe will not appreciably reduce the likelihood of survival and recovery of the Snake River Spring/summer Chinook Salmon ESU provided that it is implemented in accordance with the Implementation Terms described above.

for Donna Darm
Acting Regional Administrator

8/31/01
Date

2. I have determined that implementation of the TRMP for Imnaha River spring chinook salmon in 2001, submitted by the Nez Perce Tribe will appreciably reduce the likelihood of survival and recovery of the Snake River spring/summer chinook salmon ESU.

_____ _____

Donna Darm Date
Acting Regional Administrator

Attachment 1: Evaluation and Recommended Determination Document

Attachment 2: Environmental Assessment

References

Federal Register Notices

July 10, 2000 (65 FR 42422). Final Rule: Endangered and Threatened Species; Final Rule Governing Take of 14 Threatened Salmon and Steelhead Evolutionarily Significant Units (ESUs).

July 10, 2000 (65 FR 42481). Final Rule: Endangered and Threatened Species; Final Rule Governing Take of Threatened Salmon and Steelhead For Actions Under Tribal Resource Management Plans.

Literature cited

McElhany, P., M.H. Ruckelshaus, M.J. Ford, T.C. Wainwright, and E.P. Bjorkstedt. 2000. Viable salmonid populations and the recovery of evolutionarily significant units. U.S. Dept. Commerce, NOAA Tech. Memo. NMFS-NWFSC-42, 156 p.

NMFS. 2000. Section 10 (a)(1)(A) Permit for takes of Endangered/Threatened Species. Number 1128; Scientific Research and Enhancement. September 21, 2000.

Nez Perce Tribe (NPT) 2001. Nez Perce Tribal Management Plan for Snake River Spring/Summer Chinook Salmon in 2001. Submitted to NMFS - NWR by the Nez Perce Tribe, April 30, 2001.

Nez Perce Tribe (NPT) 2001a. Joint motion for approval of joint stipulation regarding spring chinook sliding scale hatchery and harvest management in the Imnaha River and 2001 spring chinook harvest allocation in the Imnaha River. Filed in the U.S. District Court for the District of Oregon. Civil No. 68-513. May, 2001.

Oregon Department of Fish and Wildlife (ODFW). 1998. Application for a permit for scientific research and to enhance the propagation or survival of Imnaha River chinook salmon Oncorhynchus tshawytscha under the Endangered Species Act of 1973. Oregon Department of Fish and Wildlife, LaGrande, Oregon.

ODFW. 2001. Annual Operating Plan for the Imnaha River Scientific Research and Enhancement project, including Attachment A. Proposed sport fishery for hatchery spring Chinook in the Imnaha River, 2001. Oregon Department of Fish and Wildlife, Northeast Region, LaGrande, OR.

Attachment 1

TRIBAL RESOURCE MANAGEMENT PLAN 4(d) RULE EVALUATION AND RECOMMENDED DETERMINATION

Title of TRMP: Tribal Resource Management Plan for Snake River Spring/Summer Chinook in the Imnaha River Subbasin

TRMP Provided by: The Nez Perce Tribe

Action Area: Imnaha River subbasin, Oregon

ESU: Snake River spring/summer chinook salmon

4(d) Rule Limit: Tribal 4(d) Rule [50 CFR 223.209]

Tracking Number: NWR/4d/14/2001/002

Date: July 31, 2001

BACKGROUND

The Tribal 4(d) Rule

This "Evaluation and Determination" constitutes an analysis of available information and a determination regarding the impact of the Nez Perce Tribe's (NPT) Tribal Resource Management Plan for Snake River spring/summer chinook salmon in the Imnaha River subbasin on the biological requirements of protected Snake River spring/summer chinook.

Pacific salmon populations fluctuate from year to year, but over the long term, streams and rivers have been producing fewer and fewer fish prompting Federal listing of many distinct groups of salmon and steelhead up and down the West Coast under the Endangered Species Act (ESA). In response to this crisis, the National Marine Fisheries Service (NMFS) issued a final rule under ESA section 4(d) modifying section 9 take prohibitions for threatened salmon and steelhead (July 10, 2000, 65 FR 42481 [50 CFR 223.209]). The modification creates a section 4(d) limitation on take prohibitions for Tribal Resource Management Plans (TRMPs) where the Secretary of Commerce has determined that implementing the TRMP will not appreciably reduce the likelihood of survival and recovery of the listed species. The rule also reiterated that the United States has a unique legal relationship with Indian Tribes as set forth in the Constitution, treaties, statutes, executive orders, and court decisions, and established a process to meet the conservation needs of protected species while respecting tribal rights, values and needs. The rule also requires the Secretary, in consultation with the Tribes, to use the best available scientific and

commercial data (including any Tribal data and analysis) to determine the TRMP's impact on the biological requirements of the species and reinforces the commitment to government-to-government relations as expressed in Secretarial Order 3206.

The Imnaha River subbasin is located within the Snake River basin in northeastern Oregon (Figure 1). This portion of Oregon is within the ceded area of the Nez Perce Tribe (NPT). The Tribe and the State have joint management responsibility for chinook salmon in the Imnaha River, which are also under the continuing jurisdiction of *United States v. Oregon*, the ongoing Federal court proceeding to implement and enforce reserved treaty fishing rights.

Following a *U.S. v. Oregon* dispute resolution in 1993, the NPT and the Oregon Department of Fish and Wildlife (ODFW) cooperatively developed hatchery and harvest programs to help restore Imnaha River spring/summer chinook salmon. The hatchery program is experimenting with protected chinook salmon to enhance salmon production in the Imnaha River subbasin and is currently covered under ESA section 10 (a)(1)(A) permit #1128 (NMFS 2000). The hatchery's objectives, as listed in the permit are: 1) to restore natural populations of chinook salmon in the Imnaha River subbasin to ESA delisting levels, 2) to reestablish traditional tribal and recreational fisheries for chinook salmon, 3) to maintain the genetic and life history characteristics of the endemic wild population while pursuing mitigation goals and management objectives, and 4) to operate the hatchery program to ensure that the genetic and life history characteristics of the hatchery fish mimic the wild fish. To realize these objectives, a sliding scale developed by the NPT and ODFW sets criteria for managing chinook salmon returning to the Imnaha River weir (Tables 1 and 2).

Table 1. Sliding scale allocation for spring/summer chinook salmon returning to the Imnaha River at the Gumboot Weir (ODFW 1998).

Estimated total adult escapement to the Imnaha River mouth	Ratio of hatchery to natural adults at the mouth	Maximum % natural adults to retain for broodstock	Maximum % hatchery adults to retain for broodstock	Maximum % adults of hatchery released above the weir	Minimum % of broodstock of natural origin
<50	Any	0	0	a	NA
51-700	Any	50	50	a	a
701-1000	Any	40	a	70	20
1001-1400	Any	40	a	60	25
>1400	Any	30	a	50	30

NA – Not applicable.

a – Percentages determined as a result of implementing other criteria, therefore not a decision factor.

Table 2. Management guidelines (ODFW 1998).

Escapement Level	Start Captive Brood Program	Collect for hatchery broodstock and spawn	Release to spawn naturally above weir	Outplant (hatchery fish only) to Big Sheep, Lick Creeks, and other habitat	Harvest for Tribal Ceremonial Use	Harvest for Tribal Subsistence	Constraints on % of hatchery or natural for release or broodstock	Recreational Harvest
<300 for 2 consecutive years*	Yes	No	No	No	**	**	No	No
51-700	No	Yes	Yes	No	Yes	**	No	No
>700 (see criteria below)	No	Yes	Yes	Yes	Yes	Yes	Yes	**

Criteria and Priorities for fish trapped at the weir:

a. Retain natural adults at the maximum allowable percentage defined in the sliding scale up to that needed to achieve the egg take goal of 576,500 green eggs.
b. Retain hatchery adults to meet broodstock needs at the rate equal to the number allowable to meet the minimum percentage of broodstock that must be natural origin. Spawn all fish that are collected for broodstock.
c. Do not retain more than 320 (160 females and 160 males) adults for combined natural and hatchery broodstock.
d. Release hatchery fish above the weir up to the rate equal to the percentage of adults released above the weir that can be hatchery origin.
e. Hatchery fish that are excess to what is needed for broodstock and releases above the weir will be outplanted to Big Sheep and Lick Creek or harvested.
f. No more than 10% of males placed above the weir will be hatchery origin jacks. All other hatchery jacks will be spawned with the total hatchery jack contribution to fertilization not to exceed 10% of the eggs.

*Co-managers would submit a modification to the existing permit application to initiate a captive broodstock component for the Imnaha program.

** Decision would be made on a case-by-case basis.

Projected Imnaha River subbasin 2001 Salmon Return and Management

The projected return in 2001 of natural-origin spring/summer chinook salmon to the Imnaha River is 3,518 fish (Table 3). This compares with the largest return previously recorded in the Imnaha River of 4,391 fish in 1957.

Table 3. Projected returns of spring/summer chinook salmon to the Imnaha River in 2001 (ODFW 2001).

	Adults	95% Confidence interval	Jacks	95% Confidence interval	Total
Hatchery origin	2,946	1,564 – 4,327	267	47-487	3,213
Natural origin	3,471	1,246 – 5,695	47	14-80	3,518
Total	6,417	2,810 – 10,022	314	61 – 567	6,731

The sliding scale as outlined in Table 2 provides that only Tribal ceremonial harvest may occur when the annual return of salmon is between 50 and 700. At returns in excess of 700 salmon, tribal subsistence harvest may occur and non-tribal recreational harvest may be considered on a case-by-case basis. Following the sliding scale, the co-managers expect that the 2001 Imnaha chinook salmon return will be sufficient not only to meet natural spawner and hatchery broodstock needs, but to support tribal and recreational fisheries.

Recreational fishing has been closed in the Imnaha since 1979 and little or no tribal fishing has occurred in most years. Continuing declines (because of natural and human factors) to record low numbers (redd counts in 1989, 1990, and 1991 were 40, 43, and 51, respectively) prompted the listing of these fish in 1992 under the ESA. Increasing survival in recent years credited to favorable environmental conditions and to salmon recovery efforts prompted by ESA protections has lead to increasing salmon returns. Because of these increasing returns, the Nez Perce Tribe and the State of Oregon are planning fisheries in the Imnaha River. The Nez Perce Tribe submitted a TRMP under the 4(d) rule to NMFS on April 30, 2001 (NPT 2001a). Under agreement between the Nez Perce Tribe and ODFW (NPT 2001b), both the tribal and recreational fisheries planned for the Imnaha in 2001 have been analyzed and processed together under the Tribal 4(d) Rule. Information used to make this determination comes from the TRMP and from materials referenced by the TRMP including the State of Oregon's 1998 application for a section 10 permit for the Imnaha River Chinook research and enhancement program (ODFW 1998) and the State of Oregon's Annual Operating Plan (AOP) (ODFW 2001) for Imnaha River Chinook research and enhancement.

The TRMP describes first how spawning escapement and hatchery broodstock needs will be met and then describes ceremonial and subsistence fisheries planned by the tribe and recreational fisheries planned by ODFW. The following provides a brief summary of the TRMP and sets the context for NMFS' review.

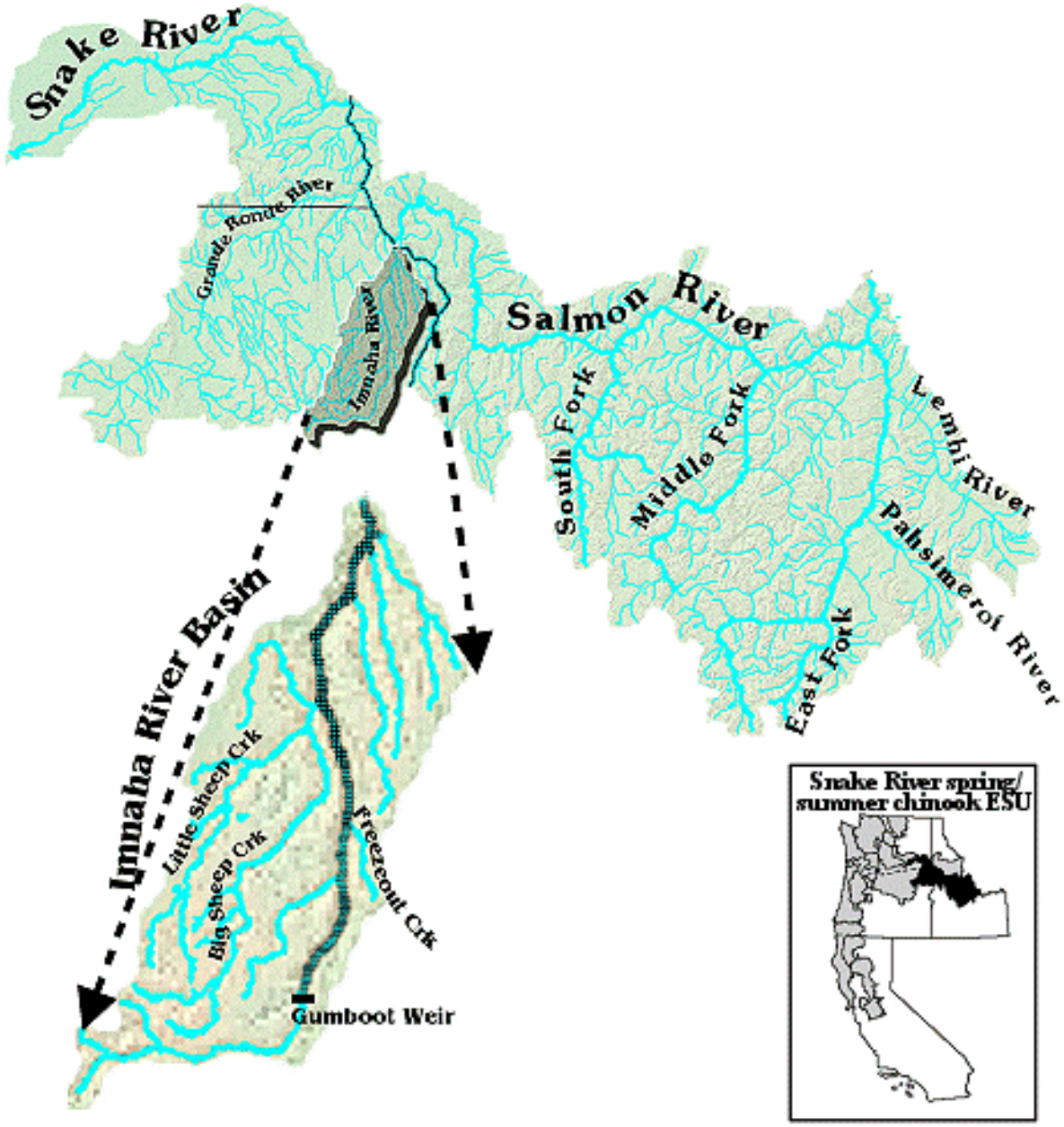
The TRMP covers activities that affect Imnaha River spring/summer chinook salmon that are part of the threatened Snake River Spring/summer chinook salmon Evolutionarily Significant Unit (ESU). The NPT and ODFW share management responsibility for these fish. The TRMP describes activities that are principally conducted by the Tribal government and activities that are principally conducted by the State through cooperative agreements. State fisheries are described in Attachment A to the 2001 AOP (ODFW 2001) which is referenced in the TRMP. As per the Tribal 4(d) Rule, NMFS consulted regularly with the Nez Perce Tribe on the content of the TRMP and on NMFS' analysis and determination that provide for the conservation of listed species.

ESU Description and Geographic Range

An ESU defines a distinct group of Pacific salmon that is not interchangeable with other salmon. The number of fish in an ESU perpetuating themselves in streams is the measure of salmon health or recovery. Approximately one third of the habitat that produced Snake River spring/summer chinook salmon has been blocked by dams in Idaho. Important areas including the Powder, Weiser, Payette, Malheur, Boise, Owyhee, and Bruneau river subbasins can no longer produce salmon. The Snake River spring/summer chinook ESU now includes fish produced in the Tucannon, Grande Ronde, Imnaha, and Salmon river (See map, Attachment 2). These salmon remain part of the ESU when managers elect to use them in experiments with

hatcheries to help boost the number of salmon perpetuating themselves in streams. Experiments like this are underway in the Imnaha, Tucannon, Grande Ronde rivers, and at the Sawtooth, Pahsimeroi, and McCall hatcheries on the Salmon River.

Figure 1. The geographic range of the Snake Basin spring/summer chinook salmon ESU, including the location of the Imnaha River basin and the area of the proposed tribal ceremonial and subsistence and non-tribal recreational fisheries proposed for 2001.



Most adult Snake River spring/summer chinook salmon return to their subbasins of origin from May through September and spawn in August and September. Juvenile salmon emerge from spawning gravels between February and June. Typically, after rearing in their nursery streams for about one year, smolts migrate to the ocean in April and May. Upon entering the ocean, these fish are believed to use nearshore areas before beginning a two to four year migration through the northeast Pacific Ocean. Adult fish (a mixture of three-, four-, and 5- year-olds) return to the Columbia river in February and March to begin their upstream migration to spawning areas. Substantial scientific information has been compiled upon which to base management decisions relating to these fish and this information is easily accessible to the public (NMFS 1998, 2000).

More than 1.5 million spring/summer chinook salmon returned to the Snake River annually prior to settlement of the region. By the 1950s, the population had declined to an estimated 125,000 adults. Escapement estimates indicate that the population continued to decline through the 1970s. Returns were variable through the 1980s, but declined further in recent years. Record low returns of 1,721 and 1,116 fish were observed in 1994 and 1995. Returns were modestly higher from 1996-1998, but declined in 1999. Table 4 reports the estimated annual return of adult, natural-origin Snake River spring and summer chinook salmon returning to Lower Granite Dam since 1979.

Table 4. Estimates of natural-origin Snake River spring/summer chinook salmon passing Lower Granite Dam, 1979-2001 (Speaks 1999).

Year	Spring Chinook	Summer Chinook	Total
1979	2,573	2,712	5,285
1980	3,478	2,688	6,166
1981	7,941	3,326	11,267
1982	7,117	3,529	10,646
1983	6,181	3,233	9,414
1984	3,199	4,200	7,399
1985	5,245	3,196	8,441
1986	6,895	3,934	10,829
1987	7,883	2,414	10,297
1988	8,581	2,263	10,844
1989	3,029	2,350	5,379
1990	3,216	3,378	6,594
1991	2,206	2,814	5,020
1992	11,285	1,148	12,433
1993	6,008	3,959	9,967
1994	1,416	305	1,721
1995	745	371	1,116
1996	1,358	2,129	3,487
1997	1,434	6,458	7,892
1998	5,055	3,371	8,426
1999	1,433	1,843	3,276
2000	8,049	846	8,895
2001[1]	17,700	2,400	20,100

[1] *preseason estimate, as of 6/4/01, in-season estimate is ca. 35,000.*

The 2001 return of Columbia River spring chinook salmon produced in hatcheries, is the largest ever recorded. Because of the substantial numbers of young salmon released by hatcheries, adult returns can be extraordinarily large when environmental conditions are just right. Since fluctuating conditions in the past several years have been very favorable, the 2001 return of spring chinook salmon return is also expected to be large.

The Imnaha River is one of the drainages expected to receive a considerable return of hatchery and naturally produced adult salmon in 2001. The 2001 projected returns of chinook produced in the Imnaha River and hatchery produced spring chinook are 3,518 and 3,213 fish respectively. The spawning escapement goal set by the Treaty Tribes for natural spawning fish in the Imnaha River subbasin is 3,820 fish. The Imnaha produced a return of 4,391 fish in 1957, the first year such estimates were produced. Since then, returns have exceeded 2,000 fish only three times (1960, 1971, and 1978). The 2001 expected return of 3,518 naturally-produced fish comes from 402 natural spawners in 1996 and 345 natural spawners in 1997. A spawner to spawner return

ratio greater than 1:1 means the population is growing. Spawner to spawner ratios appear to be on the rise in the Imnaha. In 2000, 2.5 fish returned for every spawner (ODFW 2001) and expectations are that spawner to spawner ratios will exceed 1:1 this year, too.

The measured improvement in Snake River spring/summer chinook salmon returns, and for the Imnaha River in particular, is the result of beneficial salmon recovery measures and favorable environmental conditions. These factors should continue to produce strong returns to the Imnaha River subbasin through 2002. Beyond 2002, there are already concerns about the survival of young salmon migrating to the ocean this year under poor river conditions. Survivors from this year's out-migration will return to spawn primarily in 2003 and 2004.

Description of the Fisheries and the Estimated Take of Protected Fish

The fisheries proposed for 2001 and the projected take of protected spring/summer chinook salmon are described in the NPT's TRMP (NPT 2001a). The NPT plans to conduct ceremonial and subsistence fisheries and to cooperate with ODFW to open recreational fisheries during 2001. These fisheries are expected to take some protected Snake River spring/summer chinook salmon.

The fisheries are limited to specific sites and times within the Imnaha River subbasin and include: (1) fisheries for tribal members between May 20 and July 31 (under tribal regulations) in the main stem Imnaha, from its confluence with the Snake River upstream to within 60 feet of the hatchery weir, and (2) recreational fisheries for non-tribal members between May 20 and June 31, (under state of Oregon regulations), as described in the 2001 AOP, Attachment A (ODFW 2001) in the mainstem Imnaha from its confluence with the Snake River upstream to the Freezeout Creek Bridge. Figure 1 illustrates the landmarks used for regulation purposes.

Tribal regulations allow the use of traditional fishing methods (dip net, gaff, longbow and spear) and hook and line. Recreational anglers must use hook and line under state regulations (the standard practice). Only adipose-fin-clipped chinook salmon may be retained by recreational fishers, with unclipped fish returned unharmed to the water.

The TRMP sets an overall harvest quota of 670 adult and jack chinook in 2001 (335 for tribal fishers and 335 for recreational fishers), based on a 10 % total harvest rate. Hatcheries have been planting fish in the Imnaha River subbasin since 1982. Since "1992", hatchery fish have been marked by removal of the adipose fin, and all hatchery produced fish returning to the Imnaha this year are easily identifiable by the missing adipose fin. The tribal fishery is expected to harvest 175 natural fish and 160 hatchery fish. Recreational anglers must release unmarked salmon produced in the Imnaha. The recreational fishery is expected to harvest 299 hatchery chinook, with an additional 36 natural chinook expected to die after release due to injury. In total, fishery impacts are projected to be 211 of the 3,518 natural spring/summer chinook salmon returning to the Imnaha in 2001. This represents six percent of the returning natural spawners.

EVALUATION

The final 4(d) Rule for tribal resource management plans states that the prohibitions of section 223.203(a) of the rule (16 U.S.C. 1531-1543) do not apply to actions undertaken by a tribe in compliance with a Tribal resource management plan provided that the following elements of the rule are met:

> 1. The Secretary has determined pursuant to 50 CFR 223.209 and the government-to-government processes described therein that implementing the plan will not appreciably reduce the likelihood of survival and recovery of the listed salmonids.
>
> 2. In making that determination, the Secretary has taken comment from the public on the Secretary's pending determination.
>
> 3. The tribal plan must specify the procedures by which the tribe will enforce its provisions.

As per the rule, NMFS consulted regularly with the Nez Perce Tribe during the development of the TRMP through government-to-government and staff level communications. These occasions provided the opportunity to provide technical assistance, exchange information, and discuss what would be needed to provide for the conservation of the listed species and to be consistent with legally enforceable tribal rights and with the Secretary's trust responsibilities to the tribes.

The following is an evaluation of whether the TRMP adequately addresses the criteria specified in §223.209.

Application of Fisheries Limit Criteria

NMFS has reviewed the TRMP submitted by the NPT and its affect on the Snake River spring/summer chinook salmon ESU in order to determine whether actions taken under the TRMP appreciably reduce the likelihood of survival and recovery of the affected listed ESU. At NMFS' request, the NPT provided the TRMP in the format that NMFS developed for evaluating Fisheries Management and Evaluation Plans (FMEP) under Limit (4) and Limit (6) of the July 10, 2000 4(d) rule (65 FR 42422). Limit 4 involves nine criteria that not only describe a fishery but also provide a sound basis for evaluating any biological consequences from conducting the fishery. These criteria were developed under a separate rule to cover state fisheries and joint state-tribal plans under ongoing Federal court jurisdiction, but they also provide a useful framework for assessing the impacts of TRMPs. NMFS' evaluation of the NPT TRMP is detailed below.

4(d) Fishery Limit Criteria - from CFR 223.203

In considering the effects of this TRMP on listed species, NMFS took into account the following criteria for State Fisheries Management and Evaluation Plans under limit (4) and joint state-tribal plans under limit (6) of the final ESA section 4(d) rule (65 FR 42481).

Section 4 (i)

- Clearly defines the scope and area of impact

The scope of the TRMP is clearly defined, and involves only fishery impacts to spring/summer chinook salmon in the Imnaha River during 2001. The TRMP addresses the allocation of adult salmon among different beneficial uses including, natural spawning, brood stock collection that supports an experimental hatchery program designed to aid in the recovery of this population, the release of adult spawners into under-utilized spawning habitat within the Imnaha River subbasin, and harvest.

- Sets management objectives and performance indicators for the plan

The TRMP describes fishery management within the context of existing hatchery operation planning. Fisheries harvest objectives are developed to utilize a portion of the return after the hatchery and natural spawning needs have been satisfied. Hatchery brood stock collection and the composition and number of adult salmon available for supplemental releases in under-utilized habitat within the subbasin are established by *U.S. v. Oregon* and are described in the Annual Operating Plan (AOP) for the hatchery program. The escapement and composition of chinook on the spawning grounds is managed in accordance with a sliding scale that addresses the inter-annual variation in total run size and the proportion of natural and hatchery-origin fish in the return. The TRMP management objective is to conduct fisheries in a manner that does not appreciably reduce the survival and recovery of protected chinook salmon. Performance indicators include dam, weir and redd counts, harvest estimates and escapement goals.

Section 4(i)(A) - Define populations within affected listed ESUs, taking into account spatial and temporal distribution, genetic and phenotypic diversity, and other appropriate identifiably unique biological and life history traits.

Imnaha River spring chinook are the only affected group of 39 sub-populations believed to comprise the Snake River spring/summer chinook salmon ESU. The actions described in the TRMP occur only within the Imnaha River subbasin, and during a time period when only spring/summer chinook salmon are expected to be present**.**

The artificial propagation program for Imnaha spring chinook is operated specifically to address both demographic and genetic risks, and to minimize the chance of domestication selection. The management protocol requires that hatchery and natural fish are incorporated into both the

natural spawning and hatchery broodstock components. The tribal and recreational fisheries are managed within the context of continuing to achieve artificial propagation objectives.

Section 4(i)(B) - Utilize the concepts of "viable" and "critical" salmonid population thresholds, consistent with the concepts contained in the technical document entitled Viable Salmonid Populations (NMFS 2000)

The Viable Salmonid Population paper (VSP) (McElhany *et al*. 2000) describes viable and critical levels for salmonid populations in terms of population abundance, population growth rate, spatial structure and diversity. Although viable and critical levels for this population have not been established yet, the NPT and ODFW have analyzed the total abundance, population trends, and occupation of habitat as surrogates for the VSP criteria to make judgements relative to the viability of the population (ODFW 1998). NMFS' review of Imnaha spring/summer chinook status based on available information is presented below.

Population Abundance

Viable and critical levels have not been established yet for the Imnaha spring chinook population. Annual escapements of spring/summer chinook produced in the Imnaha are reported in Table 5. The 2001 projected return of over 3,000 naturally produced chinook (after the fisheries) far exceeds any return during the last 44 years (except for 1957 and 1973) and approaches the escapement goal of 3,800 fish defined by the Columbia River Treaty Tribes (1995).

Table 5. Estimated annual return of spring/summer chinook salmon to the Imnaha River 1957-1999 (from ODFW 2001).

Year	Estimated Return	Year	Estimated Return
1957	4,391	1979*	192
1958	1,548	1980*	125
1959	874	1981*	307
1960	2,070	1982	1,234
1961	1,280	1983	926
1962	1,382	1984	1,142
1963	755	1985	1,573
1964	1,380	1986	788
1965	1,048	1987	484
1966	1,261	1988	609
1967	1,203	1989	297
1968	1,420	1990	199
1969	1,683	1991	198
1970	976	1992	205
1971	2,049	1993	430
1972	1,884	1994	118
1973	3,061	1995	204
1974	1,529	1996	266
1975	823	1997	129
1976	701	1998	255
1977	871	1999	287
1978	2,291		

* Estimates prior to 1982 are based on redd counts above the weir and are not expanded for those fish spawning below the weir location. Data sources: Parker (1997) and data from ODFW files, LaGrande office.

The number of salmon produced in Snake River tributaries, without dependence on hatcheries to produce fish, will determine in part when these fish can be removed from the ESA list. NMFS first identified delisting criteria for Snake River spring/summer chinook salmon in 1995 (NMFS 1995). More recently, NMFS has formed a Technical Recovery Team which will begin work in a matter of weeks to establish population targets for salmon in various Columbia River tributaries including the Imnaha. Future evaluation of activities in the Imnaha River subbasin will include consideration of these targets.

Population Growth Rate

The key criterion for population growth rate is the spawner:spawner ratio or cohort-replacement ratio. In a population like the Imnaha spring/summer chinook salmon, there must be sufficient productivity from the naturally produced spawners to maintain the population at or above viability thresholds in the absence of the hatchery subsidy. A viable population should not exhibit a trend of proportionately increasing contributions from naturally spawning hatchery fish.

A 1:1 spawner:spawner replacement rate means a population is stable (not growing or declining). The latest year class to have completed its return is brood year 1995, which returned as 4- and 5-year-olds in 1999 and 2000 with a cohort-replacement ratio of 2.5:1 for natural spawners (ODFW 2001). The 1996 year class, which returned as 4-year-olds in 2000, and is currently being counted in the 2001 run as 5-year-old fish, appears to have a cohort replacement rate of approximately 2.0:1. The 1997 year class that is returning as 4-year-olds in 2001 may have a replacement ratio exceeding 8.0:1. Although it is too early to predict the return of brood year 1988 fish, jack counts in the current run suggest that the return in 2002 will exceed the parent return of 196 natural spawners in 1998. Three or four consecutive brood-years with spawner:spawner ratios in excess of 1.0:1 is an indicator of population growth and viability, but still falls short of the 8-year geometric average exceeding 1.0 suggested by the NMFS 1995 Proposed Recovery Plan (NMFS 1995).

Spatial Structure

NMFS expects that spring/summer chinook will be well distributed throughout the Imnaha River subbasin in 2001. Whether fish from the Imnaha population will be induced to stray by population pressures within the Imnaha River subbasin is unknown. It is likely that the sheer number of Imnaha returnees in 2001 will result in increased straying into other Snake River tributaries. The planned harvest of 211 of 3,518 natural spring/summer chinook salmon returning to the Imnaha River is unlikely to have any effect on the spatial distribution of spawners within or outside the Imnaha River subbasin.

Diversity

The criterion for viable population diversity indicates that human caused factors, including harvest and artificial propagation, should not substantially alter variation in genetic or phenotypic

diversity or substantially alter the rate of gene flow among populations. The artificial propagation program is operated specifically to address both demographic and genetic risks, and to minimize the chance of domestication selection. The brood stock management protocol ensures that hatchery and natural fish are incorporated into both the natural spawning and hatchery components.

Implementation of the fishery would remove 211 of 3,518 fish or only about 6% of the naturally produced spawning population. The fisheries are designed within the context of the artificial propagation program, and so will not affect the program's broodstock management protocol. These fisheries are unlikely to have any effect on the genetic or phenotypic diversity of chinook salmon within the Imnaha River subbasin.

Section 4(i)(C) - Set escapement objectives or maximum exploitation rates for each management unit or population based on its status and on a harvest program that assures that those rates or objectives are not exceeded.

The average escapement to the Imnaha River between 1957 and 1967 was approximately 1560 fish (ODFW 2001). The pre-1970 average redd counts for the Imnaha River, Big Sheep Creek and Lick Creek trend areas was 321 redds (NMFS 1995). In 2001, the TRMP projects that approximately 3,518 naturally produced spring/summer chinook will return to the Imnaha River (Table 6). After hatchery brood stock collection, adult outplanting and planned fisheries, approximately 3,189 are expected to survive to spawn (Table 7). While there is no single agreed upon escapement objective for the Imnaha, some work has been done to establish what that level for spring/summer chinook should be. The Columbia Basin Fish and Wildlife Authority Subbasin Planning Process set a goal in 1990 of 3,820 for natural spawning fish (Nez Perce Tribe et al. 1990). The Columbia River Treaty Tribes' Tribal Recovery Plan (Wy-Kan-Ush-Mi Wa-Kish-Wit) (CRTT 1995) proposed a goal of 3,800 natural fish. Criteria proposed by NMFS (NMFS 1995) for delisting Snake River spring/summer chinook salmon were: (1) 80% of the spring/summer chinook salmon ESU sub-populations must have a natural cohort replacement rate that exceeds 1.0 for eight consecutive years; (2) the eight-year geometric mean spawning escapement for at least 80% of the spring/summer chinook salmon ESU sub-populations must correspond to at least 60% of the pre-1971 brood year average redd counts (this corresponds to a redd count of 193 in the index areas, or approximately 750 naturally produced spawners for the Imnaha); and (3) the eight-year geometric mean of natural spawners passing Lower Granite Dam must meet or exceed 31,440 chinook.

Table 6. Projected returns of spring/summer chinook salmon in the Imnaha River in 2001 (ODFW 2001).

	Adults	95% Confidence interval	Jacks	95% Confidence interval	Total
Hatchery origin	2,946	1,564 – 4,327	267	47-487	3,213
Natural origin	3,471	1,246 – 5,695	47	14-80	3,518

Total	6,417	2,810 – 10,022	314	61 – 567	6,731

The TRMP sets both escapement objectives and a maximum exploitation rate for the Imnaha chinook salmon population. Consistent with the sliding scale management strategy resulting from the 1993 *U.S. v. Oregon* dispute resolution, and described in the section 10 Permit application, the NPT and ODFW have determined that the anticipated adult escapement for 2001 is sufficient to meet natural spawner and hatchery brood stock goals as well as support a fishery. The projected escapement (after hatchery broodstock collection, adult outplanting, and planned fisheries) of 3,189 natural spring/summer chinook salmon in 2001 approaches the largest return (4,391 fish) in the Imnaha River since 1957 (NPT 2001a). This goal is consistent with the Proposed Recovery Plan criteria as applied to the Imnaha population, and is generally in line with other escapement objectives for the subbasin. Table 7 summarizes the allocation among spawning escapements, hatchery brood stock, and harvest proposed for 2001.

Table 7. Distribution of spring/summer chinook salmon returning to the Imnaha River in 2001 (includes jacks and adults) (NPT 2001a).

Area	Natural	Hatchery	Total
To River Mouth	3,518	3,213	6,731
Harvest	210	460	670
Number of fish post harvest	3,308	2,753	6,061
To Weir (65% of post harvest return)	2,150	1,789	3,939
Hatchery Broodstock	119	109	228
Outplant to Big Sheep and Lick Cr.	0	300	300
Spawning Upstream of Weir	2,031	1,380	3,411
Spawning Downstream of Weir (35% of post harvest return)	1,158	964	2,122
Total Natural Spawning (mainstem and tributaries)	3,189	2,644	5,833

Section 4(i)(D) - Display a biologically based rationale demonstrating that the harvest management strategy will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild, over the entire period of time the proposed harvest management strategy affects the population, including effects reasonably certain to occur after the proposed actions cease.

As discussed above under section 4(i)(D), the TRMP describes actions that assure that spawning escapements, hatchery brood stock requirements and supplemental adult releases will be

achieved in accordance with cooperative agreements. The TRMP proposes fisheries that will be limited to a 6% impact on the target population (natural fish) in a year of abundant returns. Natural fish on the spawning grounds will still approximate 75% of the previous record high (80% of the record high without the fishery) and population growth rate will remain high even with the fisheries implemented.

Section 4(i)(E) - Include effective monitoring and evaluation programs to assess compliance, effectiveness, and parameter validation. At a minimum, harvest monitoring programs must collect catch and effort data, information on escapements, and information on biological characteristics, such as age, fecundity, size and sex data, and migration timing.

In-season monitoring and reporting is required to track the fisheries and assess, in a timely fashion, whether the fisheries are following expectations or exceeding catch limitations specified in the TRMP. A combination of techniques including mandatory reporting, reporting stations, catch cards, and creel census monitoring will be utilized to monitor and evaluate fishing effort. Estimates of harvest and fishing effort will be made and reported weekly. Conservation enforcement officers will conduct catch monitoring and enforce compliance with fishing regulations.

Monitoring information will be used to estimate different fishery parameters including harvest, catch composition and participation. Dam counts and tag detections at mainstem Columbia and Snake River dams will be used to update Snake River spring/summer chinook salmon return information. Identification and estimation of Imnaha returns may be possible from PIT tag detections at the dams. In-season inventory of salmon returns to the Gumboot weir will be used to confirm run size and composition. All activities covered under the TRMP are contained within the Imnaha River subbasin, where fishers are limited to a few access roads, and a high proportion of the catch is expected to be inspected in the field. A high proportion of the total run is also captured at the weir where it is enumerated and biological data can be collected. The sampling rate for estimating run size and composition and for estimating fishery parameters is quite high, which should contribute to accurate monitoring. If the actual returns are smaller than the preseason projections, harvest goals will be reduced or the fisheries may be closed in order to ensure that brood stock goals and spawning escapements are met.

Section 4 (i)(F) - Provide for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed.

As noted under section 4(i)(E), above, co-managers will evaluate fishery monitoring data, dam counts and weir capture data weekly to verify assumptions, refine management strategies, and adjust management actions to ensure that escapement goals are attained and harvest quotas are not exceeded.

Section 4(i)(G) - Provide for effective enforcement and education. Coordination among involved jurisdictions is an important element....

State and Tribal wildlife enforcement officers will be present within the fishery areas making contact with fishers to check compliance with regulations and collecting random creel census information. Mandatory reporting and check stations will increase the interaction between the managers, enforcement staff and fishers, thereby providing opportunities for communication and educational contact with the fishers.

Section 4(i)(H) - Include restrictions on resident and anadromous species fisheries that minimize any take of listed species, including time, size, gear, and area restrictions.

Bull trout is a species that may be affected by the actions taken under the NPT TRMP for the Imnaha River subbasin spring chinook. In the 4(d) rule issued at the time of bull trout listing, the FWS found that State and Tribal fishing regulations are adequate to protect bull trout from excessive taking and therefore it is not necessary to prohibit take incidental to or in accordance with State and Native American Tribal fish and wildlife conservation laws (June 10, 1998; 63 FR 31647).

No listed adult steelhead or fall chinook are expected to be present in the Imnaha River subbasin during the period of the actions described under the TRMP. State and Tribal conservation regulations are designed to be protective of resident fish species. The regulations for the fisheries proposed under the TRMP are specifically designed to protect listed species and limit harvest to specified quotas.

Section 4(i)(I) - Be consistent with plans and conditions established within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

As parties to *U.S. v. Oregon*, the NPT and ODFW are under a court order obligating them to "exercise their sovereign powers in a coordinated and systematic manner in order to protect, rebuild, and enhance upper Columbia River fish runs while providing harvests for both treaty Indian and non-Indian fisheries." The NPT worked with its *U.S. v. Oregon* co-managers to develop this TRMP, which includes elements of cooperative agreements between the Tribe and State. The NPT has developed this plan to meet the conservation needs of the protected chinook salmon population while also providing for tribal fishing opportunity.

Notice of Pending Recommendation

As required by the Tribal 4(d) Rule, the Secretary published notice of the availability of his pending determination as to whether the TRMP will appreciably reduce the likelihood of survival and recovery of the listed salmonids in the Federal Register on May 16, 2001 (66 FR 27069).

Notice of Recommended Determination

As required in (b)(4) of section 223.209 of the ESA 4(d) tribal rule, the Secretary will publish notice of his determination as to whether the TRMP appreciably reduces the likelihood of survival and recovery of affected threatened ESUs, together with a discussion of the biological analysis underlying that determination.

RECOMMENDED DETERMINATION

NMFS has reviewed the NPT TRMP and evaluated it against the requirements of the Tribal 4(d) Rule and in light of additional considerations specific to the Imnaha River Spring chinook return in 2001. NMFS received no new information or input during the public comment period on its pending determination that implementation of the TRMP in 2001 would not reduce the likelihood of survival and recovery of Snake River spring/summer chinook salmon listed under the ESA. The TRMP is consistent with criteria that NMFS has developed to assess fishery impacts and it adequately protects listed spring/summer chinook salmon.

The Northwest Region Sustainable Fisheries Division recommends a finding that implementation of tribal and recreational fisheries in 2001 as specified in the TRMP are consistent with the July 10, 2000 ESA Tribal 4(d) rule (50 CFR 223.209).

Reevaluation Criteria

NMFS will reevaluate this determination if: (1) the quota for incidental harvest of listed fish is exceeded; (2) the actions described by the TRMP are modified in a way that causes an effect on the listed species that was not previously considered in NMFS' evaluation; (3) new information or monitoring reveals effects that may affect listed species in a way not previously considered; or (4) a new species is listed or critical habitat is designated that may affect NMFS' evaluation of the TRMP.

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